

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-CV-41

LAMAR IRON HORSE,

Plaintiff,

vs.

DENIS R. MCDONOUGH, Secretary,
U.S. Department of Veterans Affairs,

Defendant.

MOTION FOR
CLERK'S ENTRY OF DEFAULT
AS TO DEFENDANT
DENIS R. MCDONOUGH

(Fed. R. Civ. P. 55(a) and 77(c)(2)(B))

Plaintiff, by and through undersigned counsel, and pursuant to Rules 55(a) and 77(c)(2)(B) of the Federal Rules of Civil Procedure, hereby moves for the clerk's entry of default as to Defendant Denis R. McDonough, Secretary of the United States Department of Veterans Affairs. In support of this motion, Plaintiff respectfully submits the attached Affidavits of Service of the Summons and Complaint upon Defendant Denis R. McDonough, copies of which previously were filed with the Court on May 6, 2022, (DE 6, 7, 8), and shows the court the following:

1. This is an employment discrimination action seeking relief for the violation of Plaintiff's rights as a disabled person under the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act of 1964.

2. Plaintiff Lamar Iron Horse is a citizen and resident of Fayetteville,

Hoke County, North Carolina.

3. Plaintiff commenced this action on January 25, 2022, with the filing of a verified complaint against Denis R. McDonough, Secretary of the United States Department of Veterans Affairs, seeking to recover back pay, front pay, compensatory damages and equitable relief under the aforementioned civil rights statutes. (DE 1)

4. As the Secretary of the United States Department of Veterans Affairs, Mr. McDonough is the nominal party in interest in any suit, such as this one, asserting claims for the violation of civil rights against the United States Department of Veterans Affairs. 42 U.S.C. § 2000e-16(c).

5. On January 26, 2022, the Clerk of this Court, by and through his Deputy Clerk, issued three separate summonses directing defendant Denis R. McDonough, Secretary of the United States Department of Veterans Affairs, to serve upon the Plaintiff an answer to the Complaint, or a motion under Rule 12 of the Federal Rules of Civil Procedure, within 60 days after service of the Summons and Complaint upon Defendant McDonough. (DE 4).

6. One of the summonses issued by the Clerk was to be served upon Defendant McDonough by and through Michael F. Easley, the United States Attorney for the Eastern District of North Carolina; the second summons was to be served upon Defendant McDonough by and through the Honorable Merrick B.

Garland, Attorney General of the United States; and the third summons was to be served upon Defendant McDonough himself. (*Id.*).

7. Each of the individuals that were designated to be served with a summons in this case are proper persons to be served with the Summons and the Complaint in this case, Fed. R. Civ. P. 4(i)(1) and (2), and each of them was, in fact, served with the Summons and the Complaint in this case as follows:

- a. Michael F. Easley was served on January 31, 2022, (Exhibit 1),
- b. Merrick B. Garland was served on February 2, 2022, (Exhibit 2),
and
- c. Denis R. McDonough was served on February 2, 2022, (Exhibit 3).

8. As evidenced by the attached Affidavits of Service and the documents appended thereto, the Summons and the Complaint in this action were duly served upon Defendant McDonough (or his duly authorized agent for service of process) on three separate occasions: once on January 31, 2022, and twice on February 2, 2022.

9. More than 100 days have passed since Defendant McDonough and his agents were served with the Summons and the Complaint in this action, and, to date, Defendant McDonough has failed to serve upon the Plaintiff an answer to the Complaint, or a motion under Rule 12 of the Federal Rules of Civil Procedure.

10. As a consequence of Defendant McDonough's failure to serve upon

the Plaintiff an answer to the Complaint, or a motion under Rule 12 of the Federal Rules of Civil Procedure within 60 days after having been served with the Summons and the Complaint, the Clerk of this Court must enter Defendant McDonough's default. Fed. R. Civ. P. 55(a).

11. A proposed Order granting the requested relief is attached.

WHEREFORE, having shown the court that said defendant has failed to answer, to plead or to otherwise defend the Plaintiff's complaint within the time allowed by Rule 12 of the Federal Rules of Civil Procedure, Plaintiff Lamar Iron Horse respectfully requests that a default be entered by the clerk of this court against Defendant Denis R. McDonough, Secretary of the United States Department of Veterans Affairs.

Respectfully submitted this 19th day of May, 2022.

LAW OFFICES OF WILLIE D. GILBERT, II

By: /s/ Willie D. Gilbert, II

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2022, I electronically filed with the Clerk of Court the foregoing **Motion for Entry of Default as to Defendant Denis R. McDonough, Secretary of the United States Department of Veterans Affairs** using the CM/ECF system, which will send notification of such filing to the following:

Michael Bredenberg
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Respectfully submitted,

LAW OFFICES OF WILLIE D. GILBERT, II

/s/ Willie D. Gilbert, II
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